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8 GCIU-Employer Retirement Fund and
9 Board of Trustees of the
GCIU-Employer Retirement Fund

10
11 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

12
13 GCIU-EMPLOYER RETIREMENT) CASE NO. 2:23-cv-4712
14 FUND AND BOARD OF TRUSTEES)
15 OF THE GCIU-EMPLOYER) **COMPLAINT FOR COLLECTION**
16 RETIREMENT FUND,) **OF WITHDRAWAL LIABILITY**
17) **PURSUANT TO ERISA §4221(b)(1)**
18 Plaintiffs,) **and §4219(c)(5)(B) (29 U.S.C.**
19 v.) **§1401(b)(1) and 29 U.S.C.**
20) **§1399(c)(5)(B))**

21 PEAK PRINTING, INC., a Minnesota)
22 Corporation,)
23)
24 Defendants.)

COMPLAINT

Plaintiffs, GCIU-Employer Retirement Fund and Board of Trustees of the GCIU-Employer Retirement Fund, for causes of action against Defendant Peak Printing, Inc., allege as follows:

JURISDICTION AND VENUE

1. This is an action for collection of withdrawal liability, which arises under the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended by the Multiemployer Pension Plan Amendments Act of 1980, 29 U.S.C. § 1001 *et seq.*

2. This court has jurisdiction over this action under 28 U.S.C. §1331, ERISA Sections 502(e), 502(f), and 4301(c), 29 U.S.C. §§ 1132(e), 1132(f), and 1451(c).

3. Venue lies in this Court under ERISA Sections 502(e)(2) and 4301(d), 29 U.S.C. §§ 1132(e)(2) and 1451(d), in that the GCIU-Employer Retirement Fund (“Fund”) is administered in Los Angeles County, California.

PARTIES

4. Plaintiff Fund is a multiemployer pension plan within the meaning of ERISA Sections 3(37) and 4001(a)(3), 29 U.S.C. §§ 1002(37) and 1301(a)(3).

5. Plaintiff Board of Trustees of the GCIU-Employer Retirement Fund (“Board of Trustees”) is comprised of the present trustees who are the named fiduciaries of the Fund within the meaning of ERISA Section 402(a), 29 U.S.C. §1102(a), and is the plan sponsor of the Fund within the meaning of ERISA Sections 3(16)(B)(iii) and 4001(a)(10), 29 U.S.C. §§ 1002(16)(B)(iii) and 1301(a)(10). The Board of Trustees administers the Fund in Los Angeles County, California.

6. Pursuant to ERISA Sections 502(a)(3) and 4301(a)(1), 29 U.S.C. §§ 1132(a)(3) and 1451(a)(1), the Board of Trustees is authorized, as a named fiduciary, to bring this action on behalf of the Fund, its participants and beneficiaries for the purpose of collecting withdrawal liability. The Fund is also authorized to bring this action in its own name pursuant to a provision contained within Article VIII, Section 18 of the Plaintiff Fund’s Trust Agreement, which permits all legal actions to be prosecuted in the name of

1 the Fund. A true and correct copy of the Fund's Trust Agreement is attached hereto as
2 Exhibit 1.

3 7. Defendant Peak Printing, Inc. ("Peak Printing") is presently an administratively
4 dissolved corporation that was organized under the laws of the state of Minnesota.

5 **FACTUAL ALLEGATIONS**

6 8. In or about 2010, Allen Printing, Inc. ("Allen Printing") was incorporated in the
7 state of Minnesota by Anthony Schlosser and Debra Schmidt (also known as, Kay Debra
8 Schlosser).

9 9. Plaintiffs are informed and believe, and thereon allege that Allen Printing was a
10 commercial printing business and is now dissolved.

11 10. Plaintiffs are informed and believe, and thereon allege that Debra Schmidt was the
12 sole shareholder of Allen Printing from the time that it was incorporated until its
13 dissolution. However, she was not at all involved in any of Allen Printing's operations.

14 11. Plaintiffs are informed and believe, and thereon allege that Anthony Schlosser and
15 Debra Schmidt were legally married sometime after Allen Printing's incorporation, but
16 prior to its dissolution.

17 12. Anthony Schlosser served as Allen Printing's CEO and was also an employee of
18 Allen Printing.

19 13. Plaintiffs are informed and believe, and thereon allege that since its incorporation
20 and until its closure on or about December 31, 2016, Anthony Schlosser ran all of Allen
21 Printing's operations, including all managerial tasks, bookkeeping, and performing the
22 actual printing work. Additionally, Anthony Schlosser was the only person with access
23 to Allen Printing's bank account.

24 14. Plaintiffs are informed and believe, and thereon allege that Defendant Peak
25 Printing was a client of Allen Printing because Allen Printing prepared bindery orders
26 for Peak Printing.

27 15. On or about July 1, 2016, Anthony Schlosser and his brother, Andrew Schlosser,
28 who at the time was a Peak Printing employee, purchased Peak Printing in a stock sale.

1 16. After the purchase of Peak Printing, Mr. Anthony Schlosser ran the operations at
2 both Allen Printing and Peak Printing.

3 17. For all times relevant to this lawsuit, including in 2016, Allen Printing was bound
4 to a collective bargaining agreement with the GCC/IBT Local 1-M under which Allen
5 Printing was required to make contributions to the Plaintiff Fund on behalf of its
6 employees who were performing bargaining unit work under the collective bargaining
7 agreement. A true and correct copy of the collective bargaining agreement is attached
8 hereto as Exhibit 2.

9 18. Peak Printing was not a signatory to a collective bargaining agreement with the
10 GCC/IBT Local 1-M or any other collective bargaining agreements. Thus, Peak Printing
11 was not a union print shop because its shareholders, Anthony and Andrew Schlosser
12 agreed that it would not be a union shop.

13 19. Anthony Schlosser informed Plaintiffs that Allen Printing permanently closed as
14 of January 1, 2017.

15 20. Prior to its closures, and for all times relevant to this lawsuit, Allen Printing was
16 an “employer” as the term is defined by ERISA Section 3(5), 29 U.S.C. § 1002(5), and
17 was engaged in an industry affecting commerce, as defined by section 301(a) of the
18 Labor-Management Relations Act, 29 U.S.C. § 185(a).

19 21. Since as of January 1, 2017, Allen Printing was no longer operating, its obligation
20 to contribute to the Plaintiff Fund pursuant to the collective bargaining agreement with
21 GCC/IBT Local 1-M ceased, and as a result it completely withdrew from the Plaintiff
22 Fund within the meaning of ERISA Section 4201 *et seq.*, 29 U.S.C. §1381 *et seq.*

23 22. Plaintiffs determined that Allen Printing effectuated a complete withdrawal as
24 defined by ERISA Section 4203 of ERISA, 29 U.S.C. §1383, and provided it with a
25 Notice of 2017 Complete Withdrawal Liability and Demand for Payment (“Notice and
26 Demand”), dated December 6, 2018, pursuant to Section 4219(b)(1) of ERISA, 29 U.S.C.
27 §1399(b)(1).

1 23. The Notice and Demand included a schedule of payments, a detailed calculation
2 of how the amount of the withdrawal liability assessment was calculated by the actuary,
3 and was made in accordance with ERISA and the Fund's Withdrawal Liability
4 Procedures. A true and correct copy of the Notice and Demand with the detailed
5 calculations is attached hereto as Exhibit 3.

6 24. Allen Printing did not challenge the withdrawal liability assessment pursuant to
7 ERISA Section 4221(a)(1) of ERISA, 29 U.S.C. § 1401(a)(1), and the time for it to do
8 so has expired.

9 25. Allen Printing did not make its withdrawal liability payments pursuant to the
10 schedule, and as a result on February 25, 2019, Plaintiffs provided via certified mail a
11 Notice of Failure to Pay Withdrawal Liability and Demand for Cure to Allen Printing, in
12 accordance with ERISA Section 4219(c)(5), 29 U.S.C. § 1399(c)(5). A true and correct
13 copy of the Demand for Cure is attached hereto as Exhibit 4.

14 26. Allen Printing failed to cure the required withdrawal liability payments to the Fund
15 and became in default within the meaning of ERISA Section 4219(c)(5) of ERISA, 29
16 U.S.C. § 1399(c)(5).

17 27. On October 2, 2019, Plaintiffs filed suit in this Court against Allen Printing. See
18 *GCIU Employer Retirement Fund et al. v. Allen Printing, Inc.*, Case No: 2:19-cv-08505-
19 GW-KESx.

20 28. On March 24, 2020, this Court entered a default judgment against Allen Printing
21 for the full amount (\$722,679) of the withdrawal liability, plus interest, attorneys' fees
22 and costs. A copy of the Default Judgment is attached hereto as Exhibit 5.

23 29. To date, Plaintiffs have been unable to recover any portion of the default judgment
24 from Allen Printing, thus the entirety of the withdrawal liability remains due and owing.

25 30. Plaintiffs are informed and believe, and thereon allege that the commercial printing
26 business operations of Allen Printing and Peak Printing were ran in tandem with the
27 intent to avoid collective bargaining and pension obligations, including withdrawal
28

1 liability, therefore Defendant Peak Printing is the alter ego of Allen Printing, and is thus
2 jointly and severally liable for Allen Printing's withdrawal liability.

3 31. Plaintiffs are informed and believe, and thereon allege that Defendant Peak
4 Printing acquired Allen Printing Inc.'s commercial printing business, through an asset
5 transfer, and is thus jointly and severally liable for Allen Printing, Inc.'s withdrawal
6 liability under the doctrine of successor liability.

7 **FIRST CLAIM FOR RELIEF**

8 *(Alter Ego Obligation for Withdrawal Liability)*

9 32. Plaintiffs hereby reallege and incorporate each and every allegation made in
10 paragraphs 1 through 31 of this Complaint as though fully set forth herein.

11 33. Allen Printing and Peak Printing were both businesses that engaged in commercial
12 printing.

13 34. Even though Allen Printing was owned by Anthony Schlosser's wife, Debra
14 Schmidt, and Peak Printing was owned by Anthony Schlosser and his brother, Andrew
15 Schlosser, Anthony Schlosser simultaneously operated and managed both Allen Printing
16 and Peak Printing.

17 35. While Allen Printing was a signatory to a collective bargaining agreement
18 requiring it to make contributions to Plaintiff Fund, Peak Printing was not a signatory to
19 any collective bargaining agreements.

20 36. During the time that Anthony Schlosser operated both businesses, he was Allen
21 Printing's only employee covered by the collective bargaining agreement with GCC/IBT
22 Local 1-M and as a result received contributions based on the covered work that he
23 performed at Allen Printing.

24 37. Plaintiffs are informed and believe, and thereon allege that the same type of work
25 covered by the collective bargaining agreement with GCC/IBT Local 1-M was also
26 performed by Anthony Schlosser and Andrew Schlosser at Peak Printing while Allen
27 Printing was still operating.

1 38. Upon information and belief, based on Anthony Schlosser's roles and work
2 performed at both Allen Printing and Peak Printing, both entities were run in tandem with
3 the intention of avoiding Allen Printing's collective bargaining and pension obligations,
4 including withdrawal liability. Therefore, Defendant Peak Printing is Allen Printing's
5 alter ego.

6 **SECOND CLAIM FOR RELIEF**

7 *(Successor Employer Obligation for Withdrawal Liability)*

8 39. Plaintiffs hereby reallege and incorporate each and every allegation made in
9 paragraphs 1 through 38 of this Complaint as though fully set forth herein.

10 40. Plaintiffs are informed and believe, and thereon allege that there was substantial
11 continuity of Allen Printing's printing business by Defendant Peak Printing.

12 41. Plaintiffs are informed and believe, and thereon allege, that Defendant Peak
13 Printing took over Allen Printing's business operations and substantially continued its
14 business operations by incorporating it into its own existing operation. For example,
15 Allen Printing performed bindery work for Peak Printing but since the takeover Peak
16 Printing could do it in-house.

17 42. Defendant Peak Printing hired all of Allen Printing's employees and managerial
18 staff because Allen Printing only had one employee, Anthony Schlosser, who performed
19 all managerial tasks, bookkeeping tasks, and all printing work covered under the
20 collective bargaining agreement.

21 43. Defendant Peak Printing continued to provide the same services to customers as
22 Allen Printing.

23 44. At the time of its closure, Allen Printing's equipment consisted of a printing press
24 and a collator that it used in its day-to-day printing work. This equipment was transferred
25 to Peak Printing, and Peak Printing continued to use it in its day-to-day printing work.

26 45. Defendant Peak Printing also received Allen Printing's customer list and thus was
27 able to retain Allen Printing's customers and to continue to provide the same services as
28 Allen Printing.

1 46. Plaintiffs are informed and believe, and thereon allege that Defendant Peak
2 Printing had actual and constructive notice of Allen Printing's impending withdrawal
3 liability prior to or at the time that it continued the operation of Allen Printing's printing
4 business.

5 47. Since Defendant Peak Printing continued the business operations of Allen Printing
6 it became its successor, thus becoming jointly and severally liable for its withdrawal
7 liability under the doctrine of successor liability.

8 48. Defendant Peak Printing as the successor of Allen Printing is thus jointly and
9 severally liable for its withdrawal liability in the sum of \$722,679, plus interest,
10 attorneys' fees, and costs.

11 WHEREFORE, Plaintiffs request the following relief on all claims:

- 12 (i) the unpaid withdrawal liability payment of \$722,679;
- 13 (ii) interest in accordance with the prevailing market rate pursuant to §
14 4219(c)(6) of ERISA, 29 U.S.C. § 1399(c)(6), on the total amount
15 of unpaid withdrawal liability due and owing from February 4, 2019
16 until paid;
- 17 (iii) Plaintiffs' reasonable attorneys' fees and costs of the action incurred
18 herein in accordance with the Trust Agreement and ERISA Sections
19 502(g)(2)(D) and 4301(e), 29 U.S.C. §§ 1132(g)(2)(D) and 1451(e);
20 and
- 21 (iv) Such other legal and equitable relief as the Court deems appropriate.

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1 Dated: June 15, 2023

/s/ Valentina S. Mindirgasova

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